

**REMARKS**

This paper is filed in response to the Notice of Non-Compliant Amendment dated January 11, 2008. On March 23, 2007, an RCE was filed in this application that included amendments to claim 1. A Non-Final Rejection issued on April 17, 2007. A response to the Non-Final Rejection was filed August 15, 2007. In the response, the amendment to claim 1 made in the RCE was not included. A Notice of Non-Compliant Amendment issued November 1, 2007 notifying the Applicants of the omission of the amendment to claim 1. A response to the Notice of Non-Compliant Amendment was filed December 17, 2007. The December 17, 2007 response included only the first page of the listing of the claims, with claims 1-4, and included the amendment to claim 1. Another Notice of Non-Compliant issued January 11, 2008 notifying the Applicants that a complete listing of the claims is not present in the amendment, and that the amendment is unsigned. This response is filed to correct the non-compliance of the August 15, 2007 and December 17, 2007 responses. A complete listing of the claims as filed in the August 15, 2007 response, including the amendment to claim 1, is given on pages 2-5 of this response. A copy of the remarks made in the August 15, 2007 response is given below.

**COPY OF REMARKS MADE IN AUGUST 15, 2007 RESPONSE**

Claims 1-4 and 17-22 are pending in the present application. Claim 20 has been amended to place the claim in independent form. New claims 21 and 22 correspond to claims 18 and 19 and depend from claim 20.

It is respectfully submitted that the above amendments add no new matter to the Application within the meaning of 35 U.S.C. §132.

In the outstanding Office Action, claims 1-4 and 17-20 were rejected under 35 USC §101 as allegedly directed to nonstatutory subject matter. Claims 17-19 were rejected under 35 USC §102(e) as allegedly anticipated by Kazmi et al. (US 2002/0159416, hereinafter Kazmi). Claim 20 was deemed to contain allowable subject matter.

**Rejections under 35 USC §101**

In the Office Action, claim 1-4 and 17-20 were rejected under 35 U.S.C. §101 because the invention is directed to non-statutory subject matter, as not being limited to a practical limitation.

**Response**

This rejection is traversed as follows. In order to satisfy the utility requirement of 35 U.S.C. §101, the claimed invention must have specific and substantial utility. The utility is specific and substantial if one skilled in the art can use a claimed discovery in a manner which provides some immediate benefit to the public. *In re Fisher*, 421 F.3d 1365, 1371, 76 USPQ2d 1225, 1230 (Fed. Cir. 2005); *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983); and MPEP §2107.01.

The claims clearly involve modulating a signal:

"... modulating a message on a first synchronization channel ... and modulating the modified message on a second synchronization channel ..." (Claim 1; claim 17 similar.)

In addition, the claims clearly involve the use of the modulation as applied to transmission of the signal:

"... on a second synchronization channel transmitted on at least one second frequency from the at least one sector." (Claims 1 and 17.)

Such modulating a signal is clearly statutory subject matter. The modulation is useful for frequency and channel assignment for sectors in a spread spectrum communications system, as described in the Specification such that one skilled in the art can use the claimed discovery in a manner which provides some immediate benefit to the public.

Accordingly, a tangible function is presented, as required under 35 U.S.C. §101, as a practical limitation. Therefore claims 1-4 and 17-19 thereby set forth statutory subject matter.

Withdrawal of the rejection under 35 USC §101 is respectfully requested.

**Rejections under 35 USC §102(e) over Kazmi**

Claims 17-19 were rejected under 35 USC §102(e) as allegedly anticipated by Kazmi.

**Response**

This rejection is traversed as follows. For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under

section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131.

Kazmi is cited as showing modulating a message transmitted on at least one frequency, including a communication path including a radio link between a base station and a mobile station, modifying the message to generate a single modified message, modulating the modified message and transmitting the modulated signal on a second frequency. Kazmi is further cited as using EXT\_CDMA\_FREQ and related fields.

Claim 17 describes

"... modulating a message on a first synchronization channel ... generat[ing] a single modified message, the single modified message ... modulating the single modified message on a second synchronization channel transmitted on at least one second frequency from the at least one sector ... and assigning an access frequency responsive to the modified message."

The prior art does not describe assigning the frequency, but merely setting the field CDMA\_FREQ to the CDMA frequency assignment. See Kazmi, at paragraph [0036]. There is no description of modifying a message. Specifically, Kazmi fails to suggest "... modulating the modified message on a second synchronization channel transmitted on at least one second frequency from the at least one sector ..."

Accordingly, Kazmi fails to show each and every feature of the claimed subject matter and thus fails to anticipate the claims.

This distinction is significant because, according to the claimed subject matter, Applicants describe a way to provide the modified message for the purpose of assigning an access frequency responsive to the modified message.

Therefore, reconsideration and withdrawal of this rejection is respectfully requested.

### **Allowed Claims**

The Examiner indicated that claim 20 was allowable over the prior art of record. Accordingly claim 20 has been rewritten into independent form. Claims 21 and 22 depend from

claim 20 and are also allowable for the same reasons. Applicants appreciate this determination of allowability.

**Other References of Record**

Applicants have reviewed the references made of record and asserts that the claimed subject matter is patentable over the references made of record. U.S. Patent No. 6,198,937, U.S. Patent No. 6,567,666 and U.S. Patent No. 6,594,242 describe interoperability and handoffs between different generation wireless systems, such as IS95 and CDMA2000. U.S. Patent No. 6,741,868 more generally describes data interfacing. It is submitted that the above references do not disclose each feature of the claims.

**CONCLUSION**

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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